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Guidelines on Discrimination Because of Religion

Effective June 15, 1966; amended July 13,1967; November 1,1980

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(PART 1605)

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Sec. 1605.1 "Religious" nature of a Practice or Belief. --- In most cases whether or not a practice or belief is religious is not at issue. However, in those cases in which the issue does exist, the Commission will define religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. This standard was developed in UNITED STATES VS. SEEGER, 380 U.S. 163 (1965) and WELSH VS. UNITED STATES, 398 U.S. 333 (1970). The Commission has consistently applied this standard in its decisions. The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee. The phrase "religious practice" as used in these Guidelines includes both religious observances and practices, as stated in Section 701(j) (paragraph 9500, 42 U.S.C. 2000e(j).

Sec. 1605.2 Reasonable Accommodation without Undue Hardship as Required by Section 701(j) (paragraph 9500 of Title VII of the Civil Rights Act of 1964. ---

(a) PURPOSE OF THIS SECTION.

This Section clarifies the obligation imposed by Title VII of the Civil Rights Act of 1964, as amended, (sections 701 (j) (paragraph 950), 703 (paragraph 954) 717, (paragraph 982)) to accommodate the religious practices of employees and prospective employees. This section does not address other obligations under Title VII not to discriminate on grounds of religion, nor other provisions of Title VII. This section is not intended to limit any additional obligations to accommodate religious practices which may exist pursuant to constitutional, or other statutory provisions; neither is it intended to provide guidance for statutes which require accommodation on bases other than religion such as Sec. 503 of the Rehabilitation Act of 1973 (paragraph 999.6C). The legal principles which have been developed with respect to discrimination prohibited by Title VII on the bases of race, color, sex, and national origin also apply to religious discrimination in all circumstances other than where an accommodation is required.

(b) DUTY TO ACCOMMODATE.

(1) Section 701(j) (paragraph 950) makes it an unlawful unemployment practice under Sec. 703(a) (1) (paragraph 954) for an employer to fail to reasonably accommodate the religious practices of an employee or prospective, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business.

(2) Section 701(j) (paragraph 954) in conjunction with Sec. 703(c), imposes an obligation to reasonably accommodate the religious practices of an employee or prospective employee, unless the labor organization demonstrates that accommodation would result in undue hardship.

(3) Section 1605.2 is primarily directed to obligations of employers or labor organizations, which are the entities covered by Title VII that will most often be required to make an accommodation. however, the principles of Section 1605.2 also apply when an accommodation can be required of other entities covered by Title VII, such as employment agencies (Sec. 703(b) (paragraph 954) or joint labor-management committees controlling apprenticeship or other training or retraining (Sec. 703(d) (paragraph 954)).

(c) REASONABLE ACCOMMODATION.

(1) After an employee or prospective employee notifies the employer or labor organization of his or her need for a religious accommodation, the employer or labor organization has an obligation to reasonably accommodate the individual's religious practices. A refusal to accommodate is justified only when an employer or labor organization can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation. A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.

(2) When there is more than one method of accommodation available which would not cause undue hardship, the Commission will determine whether the accommodation offerred is reasonable by examining:

(i) The alternatives for accommodation considered by the employer or labor organization; and

(ii) The alternative for accommodation, if any, actually offerred to the individual requiring accommodation. Some alternatives for accommodating religious practices might disadvantage the individual with respect to his or her employment opportunities, such as compensation, terms, conditions, or privilieges of employment. Therefore, when there is more than one means of accommodation which would not cause undue hardship, the employer or labor organization must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities.

(d) ALTERNATIVES FOR ACCOMMODATING RELIGIOUS PRACTICES.

(1) Employees and prospective employees most frquently request an accommodation because their religious practices conflict with their work schedules. The following subsections are some means of accommodating the conflict between work schedules and religious practices which the Commission believes that employers and labor organizations should consider as part of the obligation to accommodate and which the Commission will consider in investigating a charge. These are not intended to be all-inclusive. there are often other alternatives which would reasonably accommodate an individuals religious practices when they conflict with a work schedule. There are also employment practices besides work scheduling which may conflict with religious practices and cause an individual to request an accommodation.

(i) VOLUNTARY SUBSTITUTES AND "SWAPS,"

Reasonable accommodation without undue hardship is generally possible where a voluntary substitute with substantially similar qualifications is available. One means of substitution is the voluntary swap. In a number of cases, the securing of a substitute has been left entirely up to the individual seeking the accommodation. The Commission believes that the obligation to accommodate requires that employers and labor organizations facilitate the securing of a voluntary substitute with substantially similar qualifiifcations. Some means of doing this which employers and labor organizations should consider are: to publicize policies regarding accommodation and voluntary substitution; to promote an atmosphere in which such substitutions are favorably regarded; to provide a central file, bulletin board or other means for matching voluntary substitutes with positions for which substitutes are needed.

(ii) FLEXIBLE SCHEDULING.

One means of providing reasonable accommodation for the religious practices of employees or prospective employees which employers and labor organizations should consider is the creation of a flexible work schedule for individuals requesting accommodation. The following list is an example of areas in which flexibility might be introduced: flexible arrival and departure times; floating or optional holidays; flexible work breaks; use of lunchtime in exchange for early departure; staggered work hours; and permitting an employee to make up time lost due to the observance of religious practices.

(ii) LATERAL TRANSFER AND CHANGE OF JOB ASSIGNMENTS.

When an employee cannot be accommodated either as to his or her entire job or an assignment within the job, employers and labor organizations should consider whether or not it is possible to change the job assignment or give the employee a lateral transfer.

APPENDIX

1. There is widespread confusion concerning the extent of accommodation under the HARDISON decision.
2. The religious practices of some individuals and some groups of individuals are not being accommodated.
3. Some of those practices which are not being accommodated are:
    - Observance of a Sabbath or religious holidays;
    - Need for prayer break during working hours;
    - Practice of following certain dietary requirements;
    - Practice of not working during a mourning period for a deceased relative;
    - Prohibition against medical examinations
    - Prohibition against membership in labor and other organizations; and
    - Practices concerning dress and other personal grooming habits.
4. Many of the employers who testified had developed alternative employment practices which accommodate the religious practices of employees and prospective employees and which meet the employer's business needs.
5. Little evidence was submitted by employers which showed actual attempts to accommodate religious practices with resultant unfavorable consequences to the employer's business. Employers appeared to have

substantial anticipatory concerns, but no, or very little, actual experience with the problems they theorized would emerge by providing reasonable accommodation for religious practices.

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